



**INDEPENDENT SECTOR**

A vital voice for us all

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**CHARITABLE REFORMS AND INCENTIVES IN  
SENATE VERSION OF TAX RECONCILIATION BILL (H.R. 4297)**

Conferees from the House of Representatives will soon be meeting with their Senate counterparts to work out differences in the tax reconciliation bill. The Senate included an important package of charitable giving incentives and responsible reforms that will strengthen the nonprofit sector in its version of the tax reconciliation bill (H.R. 4297), but there are no similar provisions in the counterpart House version of the bill (H.R. 4297).

We request that you urge the House Conferees to support the inclusion of a significant package of reforms and incentives in the final conference bill provided that harmful provisions outlined below in the Senate bill are amended.

- The charitable reforms in the Senate bill reflect in large part the recommendations of the Panel on the Nonprofit Sector, a broad effort by the charitable community to improve the transparency and accountability of charitable organizations. These reforms will help to prevent abuses by individuals who would exploit charitable organizations for personal gain, without imposing unnecessary costs or hardships on reputable charities.
- However, in several areas where we believe the proposed reforms would harm legitimate charitable activity, the sector is requesting that conferees amend the bill by removing certain provisions in the Senate tax reconciliation bill that would:
  1. Impose costly unrelated business income certification requirements on charities with assets of \$10 million or more even if they have minimal annual revenues.
  2. Restrict payments by a donor advised fund to its sponsoring organization from counting as a qualifying distribution to meet new payout requirements.
  3. Impose restrictions on grants from donor-advised funds that are more severe than those imposed on private foundations.
  4. Impose private foundation self-dealing rules on all supporting organizations.
  5. Prohibit private foundations from counting payments to supporting organizations as qualifying distributions to meet their annual payout requirements.
- The new tax incentives will spur increased charitable giving at a time when the resources of charities are stretched thin by growing community needs in the face of an unprecedented string of natural disasters.
- The IRA Rollover provision will permit older Americans to make charitable contributions from their IRA funds without suffering adverse tax consequences. A similar provision was passed by the House and the Senate by substantial bipartisan margins as part of the CARE Act but the bill was never completed by Congress. If even only a small percentage of the more than \$3 trillion held in IRAs were donated to charitable purposes, it could add billions of dollars to support the vital work of charities across the country.
- Another important incentive, scheduled to expire after two years, will help to increase both the number of donors and the total dollars contributed to charitable organizations by providing a tax benefit to all taxpayers – including the over 86 million Americans who do not currently itemize deductions – for their charitable contributions above a relatively modest floor. While permitting all Americans to deduct their full charitable contributions would have an even more positive impact on charitable giving, we believe this proposal will help generate much-needed additional support for charitable organizations in this challenging fiscal environment. In addition, the proposal expires after two years, providing charities the opportunity to determine its impact on charitable donations and to guide Congress on its continuation.

- The Senate package of reforms and incentives is essentially revenue neutral and thus does not impact other choices Congress must make under the FY06 budget resolution.

### **Summary of Major Provisions**

#### **Charitable Giving Incentives**

Many of the giving incentives have already received bipartisan support in Congress as part of the CARE Act. Incentives in the Senate bill include:

- Permitting taxpayers over age 70½ to make tax-free distributions from their IRAs directly to charitable organizations or at over age 59 ½ to make such contributions to split-interest trusts;
- Permitting taxpayers who do not itemize deductions on their income tax returns to take a deduction for their total cash contributions over \$210 for single filers (\$420 for joint filers). To balance this new incentive, taxpayers who itemize deductions would be subject to the same floor but would still be able to deduct the total of both cash and non-cash contributions over \$210 (\$420 for joint filers);
- Enhanced deduction to corporations for contributions of food and book inventory; and,
- Enhanced deduction for gifts of literary, musical, artistic, and scholarly compositions.

#### **Charitable Reforms**

In significant respects, the Senate bill's charitable reforms reflect the recommendations of the Panel on the Nonprofit Sector endorsed by hundreds of organization across the country. These include:

- Penalties for nonprofit involvement in tax shelters;
- Increasing fines and penalties for self-dealing and certain other violations by private foundations, and excess benefit transactions by public charities;
- Reforming donor-advised funds and supporting organizations, including new required minimum payout levels, and prohibitions on payments and distributions to donors and related parties (other than public charities);
- Limiting deductions for façade easements and donations of clothing and household items;
- Strengthening of the rules for appraisals required to claim tax deductions for contributions of property;
- Requiring organizations that do not otherwise have to file an annual information return to notify the IRS each year; and,
- Permitting the IRS to disclose to state officials information related to proposed actions regarding tax-exempt organizations.

#### **Areas of Concern**

Independent Sector and other charitable organizations are requesting the following changes be made to the bill:

- Removing a new requirement that the unrelated business income tax returns be certified by an outside auditor or counsel.
- Broadening a fractional interest donations provision to preserve the remedy of recapturing a donor's tax deduction but allow greater flexibility in the application of that remedy.
- Permitting any payment from a donor advised fund to its sponsoring organization to be treated as a qualifying distribution to meet new payout requirements.
- Permitting donor advised funds to make payments to organizations that do not meet the strict requirements for recognition as a "public charity" under U.S. tax laws if the sponsoring organization exercises the same expenditure responsibility process required of private foundations for similar types of grants.
- Eliminating provisions that apply private foundation self-dealing restrictions to supporting organizations.
- Permitting private foundations to count payments to supporting organizations as qualifying distributions to meet their annual payout requirements.

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